

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

CHRISTOPHER P. NAEYAERT,

Plaintiff,

v.

KIMBERLY-CLARK  
CORPORATION,

Defendant.

CASE NO. 5:17-cv-00950-JAK-JPR

STIPULATED CONFIDENTIALITY  
ORDER

Judge: John A. Kronstadt  
Magistrate Judge: Jean P. Rosenbluth

1   **A. Purposes and Limitations**

2       Plaintiff Christopher P. Naeyaert (“Plaintiff”) and Defendant Kimberly-Clark  
3   Corporation (“Defendant” and collectively the “Parties”) believe discovery in this  
4   Action is likely to involve production of confidential, proprietary, trade secret, and/or  
5   private information, including personal medical information, for which special  
6   protection from public disclosure and from use for any purpose other than litigating  
7   this action would be warranted. Having met and conferred, Plaintiff and Defendant  
8   stipulate to and petition the Court to enter the following Stipulated Confidentiality  
9   Order (“Confidentiality Order”).

10   **B. Definitions**

11       1.    Party: any party to this action, including all of its officers, directors,  
12   employees, or other persons who produce, supply, or provide access to information,  
13   documents or other tangible items for use in this action in the course of discovery.

14       2.    Disclosure or Discovery Material: all items or information, regardless of  
15   the medium or manner generated, stored or maintained (including, among other things,  
16   initial disclosures, responses to discovery requests, all deposition testimony and  
17   exhibits, transcripts, tangible things, or information derived directly therefrom), that  
18   are produced, deemed produced, or generated in disclosures or responses to discovery,  
19   or pursuant to any stipulation or agreement between or among the Parties, in this  
20   matter.

21       3.    Sensitive Personal Information: material or information not appropriate  
22   for public disclosure because of personal privacy interests, such as bank accounts,  
23   social security numbers, or home addresses.

24       4.    Private Medical Information: materials, documents, and medical records  
25   containing personal medical information or history.

26       5.    CONFIDENTIAL Information or Items: information (regardless of how  
27   generated, stored or maintained) or documents that any Designating Party reasonably  
28

believes is entitled to confidential treatment under Federal Rule of Civil Procedure 26(c).

6. HIGHLY CONFIDENTIAL Information or Items: extremely sensitive information or documents the disclosure of which the parties believe would create a substantial risk of harm to the competitive position of the Designating Party that could not be avoided by less restrictive means. Such items may include but do not necessarily include: (i) marketing, financial, sales, research and development, or technical data or information; (ii) commercially sensitive competitive information, including, without limitation, information obtained from a nonparty pursuant to a current Nondisclosure Agreement; (iii) information relating to future business/strategic plans, sales and financial projections, product development and design, and future sales and financial projections; (iv) trade secret, or other confidential research and development information; (v) product specifications and manufacturing processes; (vi) development of new products or technologies; (vii) commercial agreements, settlement agreements, or settlement communications, the disclosure of which is likely to cause harm to the competitive position of the Producing Party; and (viii) Private Medical Information or Sensitive Personal Information.

7. Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

8. Producing Party: a Party or non-party, including but not limited to a third-party subpoena recipient, that produces Disclosure or Discovery Material in this matter.

9. Designating Party: a Party or non-party, including but not limited to a third-party subpoena recipient, that designates Disclosure or Discovery Material as CONFIDENTIAL or HIGHLY CONFIDENTIAL.

10. Protected Material: any Disclosure or Discovery Material that is designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL.

1           11.    Outside Counsel: attorneys, including their support staffs, who are not  
2 employees of a Party but who are retained to represent or advise a Party in this action.

3           12.    In-House Counsel: attorneys who are employees of a Party.

4           13.    Counsel (without qualifier): Outside Counsel and In-House Counsel (as  
5 well as their support staffs).

6           14.    Expert: a person with specialized knowledge or experience in a matter  
7 pertinent to this action who has been retained by a Party or its Counsel to serve as an  
8 expert witness or as an investigator or consultant in this action. This definition  
9 includes a professional jury or trial consultant retained in connection with this action,  
10 and all persons and support staff within the Expert's organization.

11          15.    Professional Vendors: persons or entities that provide litigation support  
12 services (e.g., court reporting; photocopying; videotaping; translating; preparing  
13 exhibits or demonstrations; hosting or reviewing documents or data; organizing,  
14 storing, retrieving data in any form or medium; etc.) and their employees and  
15 subcontractors.

16          16.    Competitor: any person or entity that is engaged in the medical device  
17 business or the business of supplying medical device products or materials or  
18 machinery used in the manufacture of medical device products, or any person or entity  
19 that competes with Defendant, or any individual who is currently an agent, consultant,  
20 officer, director, or employee of any such person or entity.

21    **C.    Scope**

22           The protections conferred by this Stipulation and Confidentiality Order cover  
23 not only Protected Material (as defined above), but also any information copied or  
24 extracted therefrom, as well as all notes, copies, abstracts, excerpts, summaries,  
25 reproductions, or compilations thereof, plus testimony or conversations or  
26 presentations by the Parties or Counsel in settings that reveal Protected Material  
27 (collectively, "Secondary Materials"), and electronic images and databases. The  
28 protections conferred by this Stipulation and Order do not, however, cover disclosure

1 or use of Protected Material at trial in this action. The Parties agree to meet and confer  
2 in good faith regarding the protection, if any, to be afforded to Protected Material and  
3 Secondary Material at trial at least sixty (60) days before trial commences. If the  
4 Parties are able to reach agreement they shall submit such proposed procedures to the  
5 Court for its approval or modification. If the Parties are unable to reach agreement in  
6 whole or in part regarding the protection, if any, to be afforded to Protected Material  
7 and Secondary Material at trial, the party seeking protection shall file a Motion with  
8 the Court.

9 **D. Duration**

10 This Order shall remain in force and effect until modified, superseded, or  
11 terminated by order of the Court.

12 Even after the termination of this litigation, the confidentiality obligations  
13 imposed by this Order shall remain in effect until a Designating Party agrees in writing  
14 to terminate the obligation to protect Protected Material or a court orders otherwise.

15 For the purpose of enforcement of the provisions of this Order, this Court shall  
16 retain jurisdiction over the Parties and all persons who agree to be bound by this Order  
17 following the conclusion of this action.

18 **E. Designating Protected Material**

19 1. Documents That May Be Designated CONFIDENTIAL or HIGHLY  
20 CONFIDENTIAL. Any Producing Party may designate documents as  
21 CONFIDENTIAL or HIGHLY CONFIDENTIAL upon making a good faith  
22 determination that the documents contain information defined as CONFIDENTIAL or  
23 HIGHLY CONFIDENTIAL in paragraphs B.5 and B.6, respectively, and subject to  
24 protection under Federal Rule of Civil Procedure 26.

25 2. Form and Timing of Designations. Designation of Protected Material in  
26 conformity with this Order requires:

27 (a) For documents, information or other tangible items, the  
28 Designating Party shall designate such document, information, or other tangible item

1 as CONFIDENTIAL by marking the legend “CONFIDENTIAL - SUBJECT TO  
2 CONFIDENTIALITY ORDER IN *NAEYAERT v. KIMBERLY-CLARK CORP.*, NO.  
3 5:17-CV-00950-JAK-JPR (C.D. CAL.).”

4 (b) For documents, information or other tangible items, the  
5 Designating Party shall designate such document, information or other tangible item as  
6 HIGHLY CONFIDENTIAL by marking the legend “HIGHLY CONFIDENTIAL —  
7 SUBJECT TO CONFIDENTIALITY ORDER IN *NAEYAERT v. KIMBERLY-CLARK*  
8 *CORP.*, NO. 5:17-CV-00950-JAK-JPR (C.D. CAL.).”

9 (c) If, during a deposition or within ten (10) days thereafter, a  
10 Designating Party advises the court reporter that CONFIDENTIAL information has  
11 been disclosed during a deposition, the entire transcript shall be treated as  
12 CONFIDENTIAL for thirty (30) days after the deposition, within which time Counsel  
13 for the Designating Party shall advise the court reporter of the pages and lines on  
14 which CONFIDENTIAL information appears. At the conclusion of such thirty (30)  
15 day period, transcript pages and Exhibits containing CONFIDENTIAL information  
16 shall continue to be treated as CONFIDENTIAL under this Order.

17 (d) If, during a deposition or within ten (10) days thereafter, a  
18 Designating Party advises the court reporter that HIGHLY CONFIDENTIAL  
19 information has been disclosed during a deposition, the entire transcript shall be treated  
20 as HIGHLY CONFIDENTIAL for thirty (30) days after the deposition, within which  
21 time Counsel for the Designating Party shall advise the court reporter of the pages and  
22 lines on which HIGHLY CONFIDENTIAL information appears. At the conclusion of  
23 such thirty (30) day period, transcript pages and Exhibits containing HIGHLY  
24 CONFIDENTIAL information shall continue to be treated as HIGHLY  
25 CONFIDENTIAL under this Order.

26 Transcript pages containing Protected Material must be separately bound by the  
27 court reporter, who must affix on the face of each such page the legend  
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1 CONFIDENTIAL or HIGHLY CONFIDENTIAL, as instructed by the Designating  
2 Party.

3 The Parties may modify this procedure for any particular deposition through  
4 agreement on the record at such deposition, or otherwise by written stipulation,  
5 without approval of the Court. No Such modification will have the force or effect of a  
6 court order.

7 (e) For information produced in some tangible form other than  
8 documentary, the Designating Party shall affix the legend specified in paragraph  
9 E.2.(a) of this Order for information designated as CONFIDENTIAL, or the legend  
10 specified in paragraph E.2.(b) of this Order for information designated as HIGHLY  
11 CONFIDENTIAL, if necessary, in a prominent place on the exterior of the container or  
12 containers in which the information or item is stored. If only portions of the  
13 information or item warrant protection, the Designating Party, to the extent practicable,  
14 shall identify the protected portions.

15 To the extent that matter stored or recorded in the form of electronic or magnetic  
16 media (including information, files, databases, or programs stored on any digital or  
17 analog machine-readable device, computers, discs, networks or tapes) ("Computerized  
18 Material") is produced in such form, the Producing Party may designate such matter  
19 CONFIDENTIAL or HIGHLY CONFIDENTIAL by affixing to such media a label  
20 with the legend specified in paragraph E.2.(a) of this Order for information designated  
21 as CONFIDENTIAL, or the legend specified in paragraph E.2.(b) of this Order for  
22 information designated as HIGHLY CONFIDENTIAL.

23 Whenever a Party to whom Computerized Material designated as  
24 CONFIDENTIAL or HIGHLY CONFIDENTIAL reduces such material to hard-copy  
25 form, such party shall mark such hard-copy form with the legend specified in  
26 paragraph E.2.(a) of this Order for information designated as CONFIDENTIAL, or the  
27 legend specified in paragraph E.2.(b) of this Order for information designated as  
28 HIGHLY CONFIDENTIAL.

1 (f) To the extent that any Party or Counsel creates, develops, or  
2 otherwise establishes on any digital or analog machine-readable device, recording  
3 media, computer, disc, network, tape, file, database or program information designated  
4 CONFIDENTIAL or HIGHLY CONFIDENTIAL, that Party and its Counsel must take  
5 all necessary steps to ensure that access to such media is properly restricted to those  
6 persons who, by the terms of this Order, may have access to CONFIDENTIAL or  
7 HIGHLY CONFIDENTIAL information, and will affix to any media containing such  
8 information a label with the legend specified in paragraph E.2.(a) of this Order for  
9 information designated as CONFIDENTIAL, or the legend specified in paragraph  
10 E.2.(b) of this Order for information designated as HIGHLY CONFIDENTIAL.

11 3. Withdrawing a Designation. If it comes to a Designating Party's or a non-  
12 party's attention that information or items that it designated for protection do not  
13 qualify for protection at all, or do not qualify for the level of protection initially  
14 asserted, that Designating Party or non-party must promptly notify all other parties that  
15 it is withdrawing the mistaken designation within a reasonable period of time.

16 4. Inadvertent Failures to Designate. An inadvertent failure to designate  
17 information or items as CONFIDENTIAL or HIGHLY CONFIDENTIAL shall not  
18 automatically constitute a waiver of the Designating Party's right to secure protection  
19 for such material under this Order or otherwise but, upon a showing by the moving  
20 party, the Court may find a waiver. The Receiving Party, on notification by the  
21 Designating Party that the material is CONFIDENTIAL or HIGHLY  
22 CONFIDENTIAL, must thereafter make good faith efforts to assure that the material is  
23 treated in accordance with the provisions of this Order.

24 If the Receiving Party disagrees with the claim of confidentiality asserted by the  
25 Producing Party, the Receiving Party shall follow the procedure for challenging  
26 confidentiality designations provided for in Section F.2 of this Order.

27 5. Inadvertent Production of Information Subject to Privilege, Work Product  
28 Protection or Other Protection. Pursuant to Federal Rule of Evidence 502(d), if a



1 Producing Party inadvertently produces (or discloses) to a Receiving Party any  
2 documents or information subject to a claim of privilege or immunity from discovery  
3 (including but not limited to attorney-client privilege, work product, and immunities  
4 created by federal or state statute or regulation), such production (or disclosure) shall  
5 not be deemed a waiver in whole or in part of the Producing Party's claim of privilege  
6 or immunity from discovery, either as to specific documents and information produced  
7 (or disclosed) or on the same or related subject matter. The Producing Party may  
8 assert in writing a claim of privilege or immunity from discovery by giving notice to  
9 the Receiving Party in writing of the Producing Party's claim of privilege or immunity  
10 from discovery. Within five (5) business days of receiving this written notice, the  
11 Receiving Party shall return, sequester, or destroy the original and all copies of the  
12 privileged materials, including copies of the privileged materials disseminated to other  
13 persons by the Receiving Party, and any notes made therefrom shall be destroyed. In  
14 the event that the Receiving Party disagrees with the Producing Party's claim of  
15 privilege or immunity from discovery, then the Receiving Party shall notify the  
16 Producing Party within five (5) business days of receipt of the Producing Party's  
17 written notice of claim of privilege or immunity, and shall set forth the precise grounds  
18 upon which the Receiving Party's position rests. If the Parties cannot resolve the  
19 matter, then a party may promptly present the dispute to the Court by motion under  
20 Local Rules 37 and 79-5. See ¶ K(1). From the moment a Party provides notice of  
21 inadvertent production (or disclosure), a Receiving Party shall not copy, distribute, or  
22 otherwise use in any manner the disputed documents or information, and shall instruct  
23 all persons to whom the Receiving Party has disseminated a copy of the documents or  
24 information that the documents or information are subject to this Order and may not be  
25 copied, distributed, or otherwise used pending the motion and further notice from the  
26 Court. Notwithstanding the foregoing, the Receiving Party may use the disputed  
27 documents or information only in connection with filing a motion under seal to  
28 challenge the assertion of the claim of privilege or immunity from discovery.

1           Additionally, if the Receiving Party believes the Producing Party has  
2           inadvertently produced material that is otherwise protected by privilege, work-product  
3           protection, or other applicable protection, the Receiving Party shall comply with  
4           applicable ethical obligations.

5           **F. Challenging Confidentiality Designations**

6           1.     Meet and Confer. A Receiving Party that believes in good faith that a  
7           Designating Party's confidentiality designation is improper must notify Outside  
8           Counsel for the Designating Party in writing, specifying by Bates numbers and/or page  
9           and line numbers the particular document(s) and/or testimony it believes has been  
10          improperly designated. Thereafter, within seven (7) calendar days, the Parties shall  
11          meet and confer in good faith in an effort to resolve the issue.

12          2.     Judicial Intervention. A Receiving Party that elects to press a challenge to  
13          a confidentiality designation after considering the justification offered in meet and  
14          confer efforts by the Designating Party must provide written notice to the Designating  
15          Party that identifies the material that continues to be challenged. The Parties shall  
16          thereafter follow the procedures for discovery disputes outlined in Local Rule 37, with  
17          the Designating Party providing the Receiving Party with its portion of the Joint  
18          Stipulation within ten (10) calendar days of receiving the Receiving Party's notice as  
19          to what material remains challenged. The Parties shall then follow the rules outlined in  
20          Local Rule 37, and submit the dispute to the Court in compliance with Local Civil  
21          Rule 79-5, if applicable. On such a motion, the Designating Party shall bear the  
22          burden of demonstrating that information should be treated as Confidential or Highly  
23          Confidential under the terms of this Order or otherwise. Until the Court rules on the  
24          challenge, all parties shall continue to afford the material in question the fullest extent  
25          of protection under this Order. If the Designating Party does not provide the Receiving  
26          Party its portion of the Joint Stipulation within ten (10) calendar days of receiving  
27          written notice under this paragraph, then the challenged material shall no longer be  
28          determined to be protected by this Order.

1 **G. Access to and Use of Protected Material**

2 1. Basic Principles. A Receiving Party and their counsel may use Protected  
3 Material that is disclosed or produced in connection with this case only for  
4 prosecuting, defending or attempting to settle this case and for no other proceedings or  
5 purpose. Such Protected Material may be disclosed only to the categories of persons  
6 and under the conditions described in this Order, unless otherwise ordered by the Court  
7 or approved by the Designating Party in writing. Protected Material must be stored  
8 and maintained by a Receiving Party at a location and in a secure manner that ensures  
9 that access is limited to the persons authorized under this Order. When the litigation  
10 has been terminated, a Receiving Party must comply with the provisions of Section L  
11 below (“Final Disposition”).

12 2. Confidentiality Agreement. Any person to whom CONFIDENTIAL or  
13 HIGHLY CONFIDENTIAL information may be disclosed pursuant to this  
14 Confidentiality Order (except for this Court and its personnel) shall first be shown and  
15 shall read a copy of this Confidentiality Order and shall agree in writing to be bound  
16 by its terms by signing a copy of the Confidentiality Agreement (attached as Exhibit  
17 A). This provision shall not apply to documents or information that the Parties have  
18 agreed or the Court has ruled are not subject to the terms of this Order.

19 3. Disclosure of CONFIDENTIAL Information or Items. Unless otherwise  
20 ordered by the Court or permitted in writing by the Designating Party, a Receiving  
21 Party may disclose any information or item designated CONFIDENTIAL only to:

- 22 (a) the Receiving Party’s Counsel, as well as employees of said  
23 Counsel to whom it is reasonably necessary to disclose the information for this  
24 litigation;
- 25 (b) retained Experts (as defined in this Order) of the Receiving Party;
- 26 (c) undisclosed consultants of the Receiving Party to whom disclosure  
27 is reasonably necessary for this litigation;
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1 (d) any person who is shown on the face of the CONFIDENTIAL  
2 information to have authored or received it (but then may only be shown those specific  
3 portions of the CONFIDENTIAL information the person authored);

4 (e) the author or recipient of a document containing the  
5 CONFIDENTIAL information or a custodian or other person who otherwise possessed  
6 or knew the CONFIDENTIAL information (but then may only be shown those specific  
7 portions of the CONFIDENTIAL information the person otherwise possessed or  
8 knew);

9 (f) deponents at deposition, and their counsel, to the extent those  
10 deponents have previously seen the information or item;

11 (g) witnesses to the extent such disclosure is relevant to the testimony  
12 of the witness;

13 (h) the Court and its personnel;

14 (i) Plaintiff;

15 (j) Defendant;

16 (k) court reporters and their staffs to whom disclosure is reasonably  
17 necessary for this litigation;

18 (l) Professional Vendors to whom disclosure is reasonably necessary  
19 for this litigation;

20 (m) any special masters and/or mediators utilized in this litigation, and  
21 their employees and agents; and

22 (n) other persons only after (i) written notice to all parties and upon  
23 order of the Court, or (ii) upon written consent of the Producing Party.

24 Any Confidentiality Agreement signed by persons receiving Protected Material  
25 shall be maintained by counsel who provided the Protected Material to such persons  
26 and shall not be subject to disclosure except by Court order or by agreement. Counsel  
27 shall maintain the originals of the forms signed by persons acknowledging their  
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1 obligations under this Order for a period of one (1) year after dismissal of the action,  
2 the entry of final judgment and/or the conclusion of any appeals arising therefrom.

3 No one may attend, or review the CONFIDENTIAL portions of a deposition, or  
4 a transcript of any deposition, other than persons listed in paragraph G.3. of this  
5 Confidentiality Order and counsel for the deponent. This provision shall not apply to  
6 documents or information that the Parties have agreed or the Court has ruled are not  
7 subject to the terms of this Order.

8 4. Disclosure of HIGHLY CONFIDENTIAL Information or Items. Unless  
9 otherwise ordered by a court or permitted in writing by the Designating Party, a  
10 Receiving Party may disclose any information or item designated HIGHLY  
11 CONFIDENTIAL only to persons listed below, and only if this additional requirement  
12 is met: (1) HIGHLY CONFIDENTIAL information may not be disclosed to any  
13 Competitor:

14 (a) the Receiving Party's Counsel, as well as employees of said  
15 Counsel to whom it is reasonably necessary to disclose the information for this  
16 litigation;

17 (b) retained Experts (as defined in this Order) of the Receiving Party to  
18 whom disclosure is reasonably necessary for this litigation;

19 (c) undisclosed consultants of the Receiving Party to whom disclosure  
20 is reasonably necessary for this litigation;

21 (d) any person who is shown on the face of the HIGHLY  
22 CONFIDENTIAL information to have authored or received it (but then may only be  
23 shown those specific portions of the HIGHLY CONFIDENTIAL information the  
24 person authored or received);

25 (e) the author or recipient of a document containing the HIGHLY  
26 CONFIDENTIAL information or a custodian or other person who otherwise possessed  
27 or knew the HIGHLY CONFIDENTIAL information (but then may only be shown  
28 those specific portions of the HIGHLY CONFIDENTIAL information the person

1 otherwise possessed or knew), provided that HIGHLY CONFIDENTIAL information  
2 may not be disclosed to a Competitor;

3 (f) deponents at deposition, and their counsel, to the extent those  
4 deponents have previously seen the information or item;

5 (g) witnesses to the extent such disclosure is relevant to the testimony  
6 of the witness;

7 (h) the Court and its personnel;

8 (i) court reporters and their staffs to whom disclosure is reasonably  
9 necessary for this litigation;

10 (j) Plaintiff;

11 (k) Defendant;

12 (l) Professional Vendors to whom disclosure is reasonably necessary  
13 for this litigation;

14 (m) any special masters and/or mediators utilized in this litigation, and  
15 their employees and agents; and

16 (n) other persons only after (i) notice to all parties and upon order of  
17 the Court, or (ii) upon consent of the Producing Party.

18 Any Confidentiality Agreement signed by persons receiving Protected Material  
19 shall be maintained by counsel who provided the Protected Material to such persons  
20 and shall not be subject to disclosure except by Court order or by agreement. Counsel  
21 shall maintain the originals of the forms signed by persons acknowledging their  
22 obligations under this Order for a period of one (1) year after dismissal of the action,  
23 the entry of final judgment and/or the conclusion of any appeals arising therefrom.

24 No one may attend, or review the HIGHLY CONFIDENTIAL portions of a  
25 deposition, or a transcript of any deposition, other than persons listed in paragraph G.4.  
26 of this Confidentiality Order and counsel for the deponent. This provision shall not  
27 apply to documents or information that the Parties have agreed or the Court has ruled  
28 are not subject to the terms of this Order.

1 **H. Protected Material Subpoenaed or Ordered Produced in Other Litigation**

2 If a Receiving Party is served with a subpoena or an order issued in other  
3 litigation that would compel disclosure of any information or items designated in this  
4 action as CONFIDENTIAL or HIGHLY CONFIDENTIAL, the Receiving Party must  
5 notify the Designating Party or its Counsel in writing immediately and in no event  
6 more than five (5) court days after receiving the subpoena or order. Such notification  
7 must include a copy of the subpoena or court order unless prohibited by law. The  
8 Receiving Party shall not produce the Protected Material until the Designating Party  
9 has had ten (10) calendar days to take appropriate steps to protect the material. It shall  
10 be the responsibility of the Designating Party to obtain relief from the subpoena or  
11 order prior to the due date of compliance, and to give the Designating Party an  
12 opportunity to obtain such relief, the party from whom the information is sought shall  
13 not make the disclosure before the actual due date of compliance set forth in the  
14 subpoena or order.

15 **I. Limited Sharing of Protected Material**

16 Notwithstanding the provisions of this Order, any Party shall be permitted to  
17 disclose Protected Material to any federal government branch, agency or division in  
18 response to a request for such material by any federal government branch, agency or  
19 division.

20 Nothing herein shall prevent Plaintiff, or any other party or third-party, from  
21 seeking to modify this Order to permit access to, and/or the sharing of,  
22 CONFIDENTIAL or HIGHLY CONFIDENTIAL information with other individuals  
23 or entities for any purpose. In connection with such efforts, no Producing Party or  
24 Designating Party shall be permitted to argue that the lack of a sharing provision in the  
25 original Order, including any reliance on this fact, has any relevance to the Court's  
26 determination as to whether to modify the Order.

1     **J.     Non-Party Protection**

2             A non-party to this action who desires protection of any discovery obtained from  
3     it in this action may obtain such protection under this Order by executing and serving  
4     on each Party a copy of the Confidentiality Agreement and filing the executed copy  
5     with the Court.

6     **K.     Unauthorized Disclosure of Protected Material**

7             If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
8     Protected Material to any person or in any circumstance not authorized under this  
9     Stipulated Confidentiality Order, the Receiving Party must immediately (a) notify in  
10    writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to  
11    retrieve both the Protected Material and all Secondary Materials, (c) inform the person  
12    or persons to whom unauthorized disclosures were made of all the terms of this Order,  
13    and (d) request such person or persons execute the Confidentiality Agreement.

14            1.     Filing or Discussing Protected Material in Open Court. Without written  
15    permission from the Designating Party or permission from the Court, a Party may not  
16    file (except under seal or accompanying an application to file under seal, which  
17    application shall be filed in compliance with the Local Rules) any Protected Material  
18    in the public record of this action. A Party that seeks to file under seal any such  
19    material must comply with Local Civil Rule 79-5 and Ninth Circuit precedent,  
20    including but not limited to *Kamakana v. City and County of Honolulu*, 447 F.3d 1172  
21    (9th Cir. 2006), and *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092  
22    (9th Cir. 2016).

23            Consistent with Local Civil Rule 79-5, documents designated CONFIDENTIAL  
24    or HIGHLY CONFIDENTIAL shall be labeled as such, be filed under seal, and any  
25    motion discussing such documents must be either filed under seal or partially under  
26    seal. The cover page of such document shall also bear the legend “FILED UNDER  
27    SEAL.” Only those portions of such documents and materials containing or reflecting  
28



CONFIDENTIAL or HIGHLY CONFIDENTIAL information shall be considered as such, and may be disclosed only in accordance with this Order.

**L. Final Disposition.**

1. Unless otherwise ordered by the Court or agreed to in writing by the Producing Party, within sixty (60) days after the final termination of this action and the exhaustion of all appeals, each Receiving Party must return or destroy all Protected Material to the Producing Party. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty (60) day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Confidentiality Order as set forth in Section D (“Duration”) above.

**M. Miscellaneous**

1. Right to Further Relief. Nothing in this Order limits the right of any person to seek its modification by the Court in the future. Moreover, nothing in this Order shall prevent a Producing Party or Designating Party from obtaining a further or different order, including a protective order, that governs its production of material either by stipulation or Court order. Motions to modify this Order shall be served and filed in compliance with the Local Rules, the presiding judge’s standing orders, and other relevant orders.

2. Right to Assert Other Objections. By stipulating to this Confidentiality Order, no Party waives any rights it otherwise would have to object to disclosing or producing any information or items on any ground not addressed in this Stipulated

1 Confidentiality Order. Similarly, no Party waives any right to object on any ground  
2 relating to the admissibility of the material covered by this Confidentiality Order.

3 3. Applicable Law. The Order is subject to the Local Rules of the Central  
4 District of California and the Federal Rules of Civil Procedure on matters of procedure  
5 and calculation of time periods.

6 4. Additional Parties. In the event that additional parties are named in this  
7 Action, neither they nor their Counsel shall have access to Protected Material until  
8 executing the Confidentiality Agreement, and filing the agreement with the Court.

1 **EXHIBIT A**

2 *NAEYAERT v. KIMBERLY-CLARK CORP.*,  
3 NO. 5:17-CV-00950-JAK-JPR (C.D. CAL.).

4 **CONFIDENTIALITY AGREEMENT**

5  
6 1. I have read and understand the “Confidentiality Order” to which this  
7 Confidentiality Agreement is attached and I attest to my understanding that access to  
8 information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” may  
9 be provided to me and that such access is subject to the terms and conditions of such  
10 Confidentiality Order. I agree to be bound by such terms and conditions. I hereby  
11 submit to the jurisdiction of this Court and to the application of federal law for the  
12 purpose of enforcement of this Confidentiality Agreement and the Confidentiality  
13 Order.

14 2. I shall not use or disclose to others, except in accordance with the  
15 Confidentiality Order, any CONFIDENTIAL or HIGHLY CONFIDENTIAL  
16 information as described or designated in accordance with this agreement. I  
17 understand that the Designating Parties retain all rights to enforce the Confidentiality  
18 Order and all remedies regarding any violations of the same.

19  
20 \_\_\_\_\_  
Signature

21  
22 \_\_\_\_\_  
Printed Name

23  
24 \_\_\_\_\_  
Address

25  
26 \_\_\_\_\_  
Individual or Entity Represented

27  
28 \_\_\_\_\_  
Date

1 Agreed February 7, 2018

2  
3 VERONICA S. LEWIS, admitted *pro hac vice*  
4 THEODORE J. BOUTROUS JR., SBN 132099  
5 JULIAN W. POON, SBN 219843  
6 THEANE EVANGELIS, SBN 243570  
7 OLIVIA A. ADENDORFF, admitted *pro hac*  
8 *vice*  
9 ANDREW P. LEGRAND, admitted *pro hac*  
10 *vice*  
11 GIBSON, DUNN & CRUTCHER LLP

12 By: /s/ Veronica S. Lewis  
13 Veronica S. Lewis

14 Attorneys for Kimberly-Clark Corporation

15 MICHAEL J. AVENATTI  
16 AHMED IBRAHIM  
17 EAGAN AVENATTI, LLP

18 By: /s/ Michael J. Avenatti  
19 Michael J. Avenatti

20 Attorneys for Christopher P. Naeyaert

21 **IT IS SO ORDERED**

22 Dated: March 1, 2018

23 

24 HON. JEAN P. ROSENBLUTH  
25 UNITED STATES MAGISTRATE  
26 JUDGE